

APPEAL NO. 020148  
FILED MARCH 12, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 19, 2001. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_; that the claimant did not have disability; and that the respondent (carrier) is not relieved from liability under Section 409.002 because the claimant timely notified the employer of her injury under Section 409.001. The claimant appealed, arguing essentially that the hearing officer erred in determining compensability and disability. The carrier filed a response, urging affirmance.

The determination that the carrier is not relieved from liability under Section 409.002 because the claimant timely notified the employer of her injury under Section 409.001 has not been appealed and has become final. Section 410.169.

DECISION

Affirmed.

The claimant testified that on \_\_\_\_\_, she was injured at work when she tripped on empty pallets while carrying boxes and fell down on the concrete floor, injuring her neck and right shoulder. The claimant stated that she immediately notified her team leader, however she was given aspirin and told to continue working. There is conflicting evidence concerning sexual harassment by her team leader and reports of the claimant's poor work performance. The claimant stated that her last day of employment was February 9, 2001; that she has since worked as a baby-sitter on two occasions; and that she has received medical treatment and is unable to work because she has pain to her neck and right shoulder. The carrier contends that the claimant did not sustain an injury to her neck and right shoulder at work and that she filed a claim in retaliation for disciplinary action of her poor work performance.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury in the course and scope of employment. An employee has the burden of proving, by a preponderance of the evidence, that he or she sustained a compensable injury. Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. A "compensable injury" is "an injury that arises out of and in the course and scope of employment . . . ." Section 401.011(10). The hearing officer inferred from the evidence that the claimant's neck and right shoulder injury were not sustained at work, and determined that the claimant failed to satisfy her burden of proof. The hearing officer was not persuaded by the claimant's testimony or the medical records in evidence that she sustained a compensable injury in the course and scope of employment on \_\_\_\_\_. We conclude that the hearing officer's findings, conclusions, and decision are supported by sufficient evidence and are not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Since we are affirming the hearing officer's decision that the claimant did not have a compensable injury, the claimant cannot, by definition in Section 401.011(16), have disability. Texas Workers' Compensation Commission Appeal No. 92640, decided January 14, 1993.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS  
SUITE 750  
COMMODORE 1  
AUSTIN, TEXAS 78701.**

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Michael B. McShane  
Appeals Judge

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Edward Vilano  
Appeals Judge